

**AMENDMENT TO H.R. 2262, AS REPORTED
OFFERED BY MR. HELLER OF NEVADA**

Strike section 102 and insert the following:

1 SEC. 102. ROYALTY.

2 (a) IN GENERAL.—The production of locatable min-
3 erals (including associated minerals) from any unpatented
4 mining claim located after the date of enactment of this
5 Act shall be subject to a royalty of 5 percent of the net
6 proceeds from such production.

7 (b) ROYALTY EXCLUSION.—

8 (1) The royalty payable under this title shall be
9 waived for any person with annual net proceeds from
10 mineral production subject to subsection (a) of less
11 than \$100,000. The Secretary shall adjust such
12 \$100,000 limitation annually to reflect changes in
13 the Consumer Price Index published by the Bureau
14 of Labor Statistics of the Department of Labor.

15 (2) The obligation to pay royalties hereunder
16 shall accrue only upon the sale of locatable minerals
17 or mineral products produced from a mining claim
18 subject to such royalty, and not upon the stockpiling
19 of the same for future processing.

1 (3) Where mining operations subject to this sec-
2 tion are conducted in two or more places by the
3 same person and qualify for a waiver under subpara-
4 graph (b)(1) the operations shall be considered a
5 single operation the aggregate net proceeds from
6 which shall be subject to the limitation set forth in
7 this subsection.

8 (4) The Secretary, for the purpose of encour-
9 aging the greatest ultimate recovery of minerals and
10 in the interest of conservation of natural resources,
11 is authorized to waive, suspend, or reduce the roy-
12 alty on any mining claim or group of mining claims,
13 whenever in his judgment it is necessary to do so in
14 order to promote development, or whenever in his
15 judgment the claim or claims and other lands com-
16 prising a single operation cannot be successfully op-
17 erated under the royalty provided in this section.

18 (c) LIMITATIONS AND ALLOCATIONS OF NET PRO-
19 CEEDS, GROSS YIELD, AND ALLOWABLE DEDUCTIONS.—

20 (1) The several deductions listed in subpara-
21 graph (n)(2) are intended to allow a reasonable al-
22 lowance for corporate overhead, but do not include
23 any expenditures for salaries, or any portion of sala-
24 ries, of any person not actually engaged in

25 (A) the working of the mine;

1 (B) the operating of the leach pads, ponds,
2 plants, mills, smelters, or reduction works;

3 (C) the operating of the facilities or equip-
4 ment for transportation; or

5 (D) superintending the management of any
6 of those operations described in subparagraphs
7 (A) through (C).

8 (2) Ores or solutions of locatable minerals, sub-
9 ject to the royalty requirements of this title, may be
10 extracted from mines comprised of mining claims
11 and lands other than mining claims. ore or solutions
12 of locatable minerals, subject to the royalty require-
13 ments of this section, may be commingled with ores
14 or solutions from lands other than mining claims. in
15 any such case, for the purposes of determining the
16 amount of royalties payable under this title

17 (A) the operator shall first sample, weigh
18 or measure, and assay the same in accordance
19 with accepted industry standards; and

20 (B) gross yield, allowable costs and net
21 proceeds for royalty purposes shall be allocated
22 in proportion to mineral products recovered
23 from the mining claims in accordance with ac-
24 cepted industry standards.

1 (d) LIABILITY FOR ROYALTY PAYMENTS.—The
2 owner or co-owners of a mining claim subject to a royalty
3 under this title shall be liable for such royalty to the extent
4 of the interest in such claim owned. As used in this sub-
5 section, the terms “owner” and “co-owner” mean the per-
6 son or persons owning the right to mine locatable minerals
7 from such claim and receiving the net proceeds of such
8 sale, but shall not include a person that is engaged in con-
9 tract mining for such owner or co-owners. No person who
10 makes any royalty payment under this section attributable
11 to the interest of any owner or co-owner liable therefor
12 shall become liable to the United States for such royalty
13 payment as a result of making such payment to the United
14 States on behalf of such owner or co-owner.

15 (e) TIME AND MANNER OF PAYMENTS.—

16 (1) Royalty payments for production from any
17 mining claim subject to a royalty under this title
18 shall be due to the United States at the end of the
19 month following the end of the calendar quarter in
20 which the net proceeds from the sale of such produc-
21 tion are received by the owner or co-owners. Royalty
22 payments may be made based upon good faith esti-
23 mates of the gross yield, net proceeds and the quan-
24 tity of ore, concentrates, or other beneficiated or
25 fabricated products of locatable minerals, subject to

1 adjustment when the actual annual gross yield, net
2 proceeds and quantity are determined by the owner
3 or co-owners of the mining claim.

4 (2) Each royalty payment or adjustment shall
5 be accompanied by a statement containing each of
6 the following:

7 (A) the name and Bureau of Land Man-
8 agement serial number of the mining claim or
9 claims from which ores, concentrates, solutions
10 or beneficiated products of locatable minerals
11 subject to the royalty required in this section
12 were produced and sold for the period covered
13 by such payment or adjustment;

14 (B) the estimated (or actual, if deter-
15 mined) quantity of such ore, concentrates, solu-
16 tions or beneficiated or fabricated products pro-
17 duced and sold from such mining claim or
18 claims for such period;

19 (C) the estimated (or actual, if deter-
20 mined) gross yield from the production and sale
21 of such ore, concentrates, solutions or
22 beneficiated products for such period;

23 (D) the estimated (or actual, if deter-
24 mined) net proceeds from the production and
25 sale of such ores, concentrates, solutions or

1 beneficiated products for such period, including
2 an itemization of the applicable deductions de-
3 scribed in subparagraph (n)(2);

4 (E) the estimated (or actual, if deter-
5 mined) royalty due to the United States, or ad-
6 justment due to the United States from such
7 owner or co-owners, for such period; and

8 (3) The amount of any royalty collected and
9 paid to the United States on behalf of any co-owner
10 or royalty owner liable therefore under subparagraph
11 (d). In lieu of receiving a refund under subsection
12 (g)(2), the owner of co-owners may elect to apply
13 any adjustment due to such owner or co-owners as
14 an offset against royalties due from such owner or
15 co-owners to the United States under this Act, re-
16 gardless of whether such royalties are due for pro-
17 duction and sale from the same mining claim or
18 claims.

19 (f) RECORDKEEPING AND REPORTING REQUIRE-
20 MENTS.—

21 (1) An owner, operator, or other person directly
22 involved in conducting mineral activities, trans-
23 porting, purchasing, or selling of locatable minerals,
24 concentrates, or products derived therefrom, subject
25 to a royalty under this title, through the point of

1 royalty computation, shall establish and maintain
2 any records, make any reports, and provide any in-
3 formation that the Secretary may reasonably require
4 for the purposes of implementing this title or deter-
5 mining compliance with regulations or orders under
6 this title. Upon the request of the Secretary when
7 conducting an audit or investigation pursuant to
8 subsection (h), the appropriate records, reports, or
9 information which may be required by this title shall
10 be made available for inspection and duplication by
11 the Secretary.

12 (2) Records required by the Secretary under
13 this title shall be maintained for three years after
14 the records are generated unless the Secretary noti-
15 fies the record holder that he or she has initiated an
16 audit or investigation specifically identifying and in-
17 volving such records and that such records must be
18 maintained for a longer period. When an audit or in-
19 vestigation is under way, such records shall be main-
20 tained until the earlier of the date that the Secretary
21 releases the record holder of the obligation to main-
22 tain such records or the date that the limitations pe-
23 riod applicable to such audit or investigation under
24 subsection (h) expires.

25 (g) INTEREST ASSESSMENTS.—

1 (1) If any royalty payments under this title are
2 not received by the Secretary on the date that such
3 payments are due, or if such payments are less than
4 the amount due, the Secretary shall charge interest
5 on such unpaid amount. Interest under this sub-
6 section shall be computed at the rate published by
7 the Department of the Treasury as the “Treasury
8 Current Value of Funds Rate”. In the case of an
9 underpayment or partial payment, interest shall be
10 computed and charged only on the amount of the de-
11 ficiency and not on the total amount, and only for
12 the number of days such payment is late. No other
13 late payment or underpayment charge or penalty
14 shall be charged with respect to royalties under this
15 title.

16 (2) In any case in which royalty payments are
17 made in excess of the amount due, or amounts are
18 held by the Secretary pending the outcome of any
19 appeal in which the Secretary does not prevail, the
20 Secretary shall promptly refund such overpayments
21 or pay such amounts to the person or persons enti-
22 tled thereto, together with interest thereon for the
23 number of days such overpayment or amounts were
24 held by the Secretary, with the addition of interest
25 charged against the United States computed at the

1 rate published by the Department of the Treasury as
2 the “Treasury Current Value of Funds Rate”.

3 (h) AUDITS, PAYMENT DEMANDS, AND LIMITA-
4 TIONS.—

5 (1) The Secretary may conduct, after notice,
6 any audit reasonably necessary and appropriate to
7 verify the royalty payment required under this title.
8 Notice of such audit shall be provided to all owners,
9 co-owners, and mine managers.

10 (2) The Secretary shall send or issue any billing
11 or demand letter for royalty due on locatable min-
12 erals produced and sold from any mining claim sub-
13 ject to a royalty under this title not later than three
14 years after the date such royalty was due and must
15 specifically identify the production involved, the roy-
16 alty allegedly due and the basis for the claim. No ac-
17 tion, proceeding or claim for royalty due on locatable
18 minerals produced and sold, or relating to such pro-
19 duction, may be brought by the United States, in-
20 cluding but not limited to any claim for additional
21 royalties or claim of the right to offset the amount
22 of such additional royalties against amounts owed to
23 any person by the United States, unless judicial suit
24 or administrative proceedings are commenced to re-
25 cover specific amounts claimed to be due prior to the

1 expiration of three years from the date such royalty
2 is alleged to have been due.

3 (i) CONFIDENTIALITY.—The Secretary shall main-
4 tain the confidentiality of all information obtained under
5 this title.

6 (j) TRANSITIONAL RULES.—Any unpatented mining
7 claim located prior to the date of enactment of this Act
8 and any amendment thereof after the date of enactment
9 shall not be subject to the obligation to pay the royalty
10 pursuant to this section.

11 (k) DISBURSEMENT OF REVENUES.—Subject to ap-
12 propriations, all receipts from royalties collected under
13 this section shall be paid into the fund established in ac-
14 cordance with section 401.

15 (l) NO IMPLIED COVENANTS.—The owner of a min-
16 ing claim subject to the provisions of this title shall have
17 no obligation, expressed or implied, to explore for, develop,
18 produce or market locatable minerals as a result of the
19 obligation to pay royalty hereunder, and the timing, na-
20 ture, extent and manner of exploring, developing, mining
21 and marketing such locatable minerals shall be in the sole
22 discretion of the claim owner.

23 (m) PENALTIES.—Any person who withholds pay-
24 ment or royalties under this title after a final, nonappeal-
25 able determination of liability may be liable for civil pen-

alties of up to \$5,000 per day that payment is withheld
after becoming due.

(n) DEFINITIONS.—In this section:

(1) The term “gross yield” means—

(A) in the case of sales of gold and silver
ore, concentrates or bullion, or the sales of
other locatable minerals in the form of ore or
concentrates, the actual proceeds of sale of such
ore, concentrates or bullion;

(B) in the case of sales of beneficiated
products from locatable minerals other than
those referred to in subparagraph (A), such as
cathode, anode or copper rod or wire, or other
products fabricated from the locatable minerals,
the gross income from mining derived from the
first commercially marketable product deter-
mined in the same manner as under section 613
of the Internal Revenue Code of 1986;

(C) in the event that ore, concentrates,
beneficiated or fabricated products or locatable
minerals are used or consumed and are not sold
in an arms length transaction, the reasonable
fair market value of the ore, concentrates,
beneficiated or fabricated products at the mine

1 or wellhead determined from the first applicable
2 of the following:

3 (i) published or other competitive sell-
4 ing prices of locatable minerals of like kind
5 and grade;

6 (ii) any proceeds of sale;

7 (iii) value received in exchange for any
8 thing or service; or

9 (iv) the value of any locatable min-
10 erals in kind or used or consumed in a
11 manufacturing process or in providing a
12 service; and

13 (v) In such other manner determined
14 by the Secretary that arrives at a reason-
15 able value for the locatable minerals con-
16 tained therein at the mine or wellhead.

17 (D) without limiting the foregoing, the
18 profits or losses incurred in connection with for-
19 ward sales, futures or commodity options trad-
20 ing, metal loans, or any other price hedging or
21 speculative activity or arrangement shall not be
22 included in gross yield.

23 (2) The term “net proceeds” shall mean gross
24 yield, less the sum of the following allowable deduc-
25 tions determined in accordance with generally ac-

1 cepted accounting principles in the United States,
2 and none other:

3 (A) Extracting the locatable mineral.

4 (B) Transporting the locatable mineral
5 from the claim to the place or places of reduc-
6 tion, beneficiation, refining, and sale.

7 (C) Reduction, beneficiation, refining, and
8 sale of the locatable mineral.

9 (D) Marketing and delivering the locatable
10 mineral and the conversion of the locatable min-
11 eral into money.

12 (E) Maintenance and repairs of—

13 (i) all machinery, equipment, appa-
14 ratus, and facilities used in the mine;

15 (ii) all crushing, milling, leaching, re-
16 fining, smelting, and reduction works,
17 plants, and facilities; and

18 (iii) all facilities and equipment for
19 transportation.

20 (F) Support personnel and support serv-
21 ices at the mine site, including without limita-
22 tion, accounting, assaying, drafting and map-
23 ping, computer services surveying, housing,
24 camp, and office expenses, safety, and security.

1 (G) Engineering, sampling, and assaying
2 pertaining to development and production.

3 (H) Permitting, reclamation, environ-
4 mental compliance and monitoring.

5 (I) Fire and other insurance on the ma-
6 chinery, equipment, apparatus, works, plants,
7 and facilities mentioned in subparagraph (E).

8 (J) Depreciation of the original capitalized
9 cost of the machinery, equipment, apparatus,
10 works, plants, and facilities listed in subpara-
11 graph (E). The annual depreciation charge shall
12 consist of amortization of the original cost in a
13 manner consistent with the Internal Revenue
14 Code of 1986, as amended from time to time.
15 The probable life of the property represented by
16 the original cost must be considered in com-
17 puting the depreciation charge.

18 (K) All money expended for premiums for
19 industrial insurance, and the owner paid cost of
20 hospital and medical attention and accident
21 benefits and group insurance for all employees
22 engaged in the production or processing of
23 locatable minerals.

24 (L) All money paid as contributions or
25 payments under State unemployment com-

1 pensation law, all money paid as contributions
2 under the Social Security Act, and all money
3 paid to State government in real property taxes
4 and severance or other taxes measured or levied
5 on production, or Federal excise tax payments
6 and payments as fees or charges for use of the
7 Federal lands from which the locatable minerals
8 are produced.

9 (M) Developmental work in or about the
10 mine or upon a group of mines when operated
11 as a unit.

12 (N) All royalties, overriding royalties, pro-
13 duction payments or similar payments meas-
14 ured by production (other than the royalty
15 under this section) paid to any person, and all
16 severance, ad valorem or other taxes, fees or
17 charges based on or measured by production
18 paid to any person.

19 (O) Any other deduction permitted by the
20 Secretary.